

December 17, 2012

VIA ELECTRONIC MAIL

The Honorable Denise L. Cote
Daniel Patrick Moynihan United States
Courthouse
500 Pearl Street, Room 1610
New York, NY 10007-1312

Re: FHFA Actions. No. 11 Civ. 5201 (S.D.N.Y.) (DLC), et al.

Dear Judge Cote:

We write on behalf of Plaintiff Federal Housing Finance Agency (“FHFA”), as conservator for Fannie Mae and Freddie Mac (together, the “GSEs”), in response to Defendants’ December 17, 2012, letter to the Court, in which Defendants continue to seek an order compelling FHFA to produce mortgage fraud incident notices (“MFINs”) reported to the Office of Federal Housing Enterprise Oversight (“OFHEO”). The parties met-and-conferred yesterday in an attempt to avoid burdening the Court with this issue, but remain at an impasse.

Defendants have attached to their December 17 letter a MFIN dated April 18, 2007, which references deviations in up to 27 appraisals over an 11 ½-year period by one appraiser “*on loans sold to Fannie Mae*.” That is, the MFIN, by its own terms, reports “fraud or possible mortgage fraud” with respect to single-family loans purchased by Fannie Mae having no connection whatsoever to Fannie Mae’s private-label securities (“PLS”) purchases. It is critical for understanding this issue that, although Fannie Mae was in possession of the loan files for the whole loans it purchased on the single-family side, it did not hold or have access to the loan files on the PLS side. In other words, it had no ability to investigate the loans underlying the PLS purchases. Because the loans on the single-family side were not the loans that went into PLS, there was no reason why these reports would be of any significance to PLS traders or their supervisory chain.

This is borne out by the April 19, 2007, cover e-mail to Fannie Mae’s single-family risk personnel that Defendants attached to their December 17 letter. For example, the referenced “MBS program office” that received “a loan list and other case detail” is responsible for *Fannie Mae* issued MBS, not for purchasing PLS securities. Likewise, the other personnel on the distribution list are either legal personnel, single-family personnel, or senior risk personnel responsible for overseeing *both* Fannie Mae’s single-family and PLS businesses. In order to perform their job functions, these senior risk managers (such as Enrico Dallavecchia) could be informed of instances of possible fraud, but FHFA is not aware of any instance where such material was communicated to those on the PLS trading desk. That is what FHFA represented to the Court this past Friday, and the April 19, 2007, correspondence Defendants have attached to their recent letter supports that.

FHFA believes that during the relevant 2005-2007 time period of the Securitizations, the GSEs did not file MFINs with OFHEO with respect to loans underlying their PLS purchases. In fact, the GSEs understood their reporting obligations under the relevant OFHEO regulations to

require the reporting of possible incidents of mortgage fraud only with respect to the GSEs' whole loan purchases.

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The Mortgage Fraud Incident Notice that Defendants have provided to the Court is not discoverable. A single appraiser involved with, on average, fewer than three loans per year in a single State does not provide notice of Defendants' regular, widespread misrepresentations and inadequate due diligence. Instead, the MFIN shows only isolated examples of possible fraud in loans *not at issue in the Actions*. Should FHFA identify any MFINs with respect to loans underling the Securitizations at issue in the Actions, FHFA will promptly produce those to Defendants, absent any applicable privilege.

Respectfully submitted,

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